

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JEAN A. METZKER,

Plaintiff,

-against-

WHOLE FOODS MARKET, INC.,

Defendants.
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Civil Case No.:

NOTICE OF REMOVAL

Defendant, WHOLE FOODS MARKET GROUP, INC., by its attorneys, FISHMAN
McINTYRE BERKELEY LEVINE SAMANSKY P.C., respectfully petition the United States
District Court, Southern District of New York, upon information and belief, as follows:

1. This case was originally commenced on or about December 18, 2019 against
Whole Foods Market Group, Inc. in the Supreme Court of the State of New York, County of
New York. The suit is identified in the Supreme Court as “Jean A. Metzker v. Whole Foods
Market Group Inc.”, *Index No. 162215/2019*. A true copy of plaintiff’s Summons and Verified
Complaint is annexed hereto as **Exhibit A**.

2. Defendant, Whole Foods Market Group, Inc. (“Whole Foods”) first received
notice of the Complaint on or about December 31, 2019 when service was effectuated upon
Whole Foods via the New York Secretary of State following plaintiff initiating this action with
the New York County Clerk on December 18, 2019. See **Exhibit B** hereto. The grounds for
removal are based on the original jurisdiction of this Court under 28 U.S.C. § 1332, which allows
this Court to hear matters based on diversity of citizenship of the parties.

3. Plaintiff’s Verified Complaint does not set forth any specific demand for
damages, including any monetary amount (See Exhibit A hereto).

4. On January 30, 2020, Whole Foods served its Answer to plaintiff’s Complaint. A

true copy of same is annexed hereto as Exhibit C.

5. On or about January 30, 2020, a Request to Admit was served on plaintiff's counsel. See Exhibit D annexed hereto. The Request to Admit sought to have plaintiff admit that as of the date of plaintiff's accident, January 13, 2018, and thus the date the cause of action arose, plaintiff was a citizen of the State of New York. Plaintiff has never responded to the same or otherwise sought an extension of time in which to respond to the Request to Admit. Under the CPLR, a party has 30 days in which to either admit or deny a Request to Admit. Here, plaintiff's failure to respond results in plaintiff admitting to being a citizen of the State of New York at all pertinent times.

6. Also on or about January 30, 2020, Whole Foods served a Demand for a Verified Bill of Particulars upon plaintiff. Plaintiff served her verified bill of particulars dated June 17, 2020, and received by this office on or about June 22, 2020. In plaintiff's verified bill of particulars, a true copy which is annexed hereto as Exhibit E, plaintiff demands/pleads special damages totaling approximately \$129,000.00. (See Exhibit E, paragraphs 18 and 19). Specifically, plaintiff claims hospital expenses of approximately \$10,000.00; physician services of approximately \$30,000.00; medical supplies expenses approximately \$12,000.00; medication expenses of approximately \$12,000.00; physical and rehabilitation services of approximately \$50,000.00; and radiological services of approximately \$15,000.00. Thus, a total of approximately \$129,000.00 in "special damages" alone. Obviously, this does not take into account any damages for past and future pain and suffering. Indeed, the aforesaid special damages disclosure is only through the time of plaintiff's bill of particulars, and as expressly set forth in bill of particular 18 are said to be "continuing, and are expected to last throughout her (plaintiff's) lifetime".

7. Based on the foregoing, there can be no doubt that the amount in controversy herein exceeds \$75,000, exclusive of interest and costs. Indeed, plaintiff has disclosed approximately \$129,000.00 just in special damages incurred to date, which again, does not include any future special damages and compensatory damages for pain and suffering, both past and future.

8. Further, this Notice of Removal is being filed within 30 days of receipt of plaintiff's verified bill of particulars.

9. Whole Foods Market Group, Inc. is a foreign corporation, incorporated in the State of Delaware, having its principle place of business in Austin, Texas (See Exhibit F).

10. As touched on above, the plaintiff is deemed to be a citizen of the State of New York. Indeed, per plaintiff's Complaint, she admits to being a resident of the State of New York. Whole Foods is a foreign corporation, incorporated in a state other than New York, and having its principle place of business in a state other than New York. As such, this action is between the plaintiff in one state, and a defendant corporation, of another state.

11. Based upon the foregoing, diversity of citizenship exists.

12. Written notice of the filing of this Notice of Removal has been given to all parties in accordance with 28 U.S.C. §1446 (d), as evidenced in the annexed Certificate of Service.

13. Promptly after filing this Notice with the Court and the assignment of a civil docket number, a copy of this Notice will be filed with the Supreme Court of the State of New York, County of New York, in accordance with 28 U.S.C. §1446 (d).

WHEREFORE Petitioners, WHOLE FOODS MARKET GROUP, INC., defendant in the action described herein now pending the Supreme Court of the State of New York, County of New York, under Index No. 162215/2019, prays that this action be removed therefrom to this Honorable

Court.

Dated: New York, New York
July 8, 2020



Mitchell B. Levine, Esq.
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